

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of Applications of	)	
	)	
CITY OF CHICAGO	)	FCC File Nos. 0000821295, 0000821357,
	)	and 0000672433
For Modification of Licenses for Private Land	)	
Mobile Radio Service Stations WPFY216,	)	
WPFY219, and WNDW413, Chicago, Illinois, and	)	
Request for Waiver of Inter-Category Sharing	)	
Freeze in the 806-821/851-866 MHz Bands	)	

**ORDER**

**Adopted: January 13, 2003**

**Released: January 24, 2003**

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. *Introduction.* In this *Order*, we address the above-captioned applications and waiver requests filed by the City of Chicago (Chicago) to modify its licenses for Public Safety Stations WPFY216, WPFY219, and WNDW413, Chicago, Illinois.<sup>1</sup> For the reasons set forth below, we grant the waiver requests.

2. *Background.* Private land mobile radio services (PLMRS) frequencies in the 806-821/851-866 MHz bands (the “800 MHz band”) are divided into the following “categories” or “pools”: (a) Specialized Mobile Radio, (b) Public Safety, (c) Business, (d) Industrial/Land Transportation (I/LT), and (e) General.<sup>2</sup> As a general matter, applicants are licensed on frequencies in the category or categories for which they meet the eligibility criteria.<sup>3</sup> Section 90.621(e) of the Commission’s Rules permits “inter-category sharing” whereby applicants that are eligible for licensing in the 800 MHz Public Safety, I/LT, or Business Categories can be licensed on channels outside of their respective categories if no channels are available in the category for which the applicant is eligible.<sup>4</sup> On April 5, 1995, however, the Wireless Telecommunications Bureau (Bureau) suspended the acceptance of applications for inter-category sharing (inter-category sharing freeze) of all PLMRS frequencies in the 800 MHz band.<sup>5</sup>

3. Chicago is the licensee of Stations WPFY216, WPFY21, and WNDW413. These stations operate on, *inter alia*, frequencies 865.8875 MHz, 865.9125 MHz, 865.9375 MHz, 865.9625 MHz, and 865.9875 MHz. Nextel Communications, Inc., through its wholly-owned subsidiary, Nextel License Holdings 4, Inc. (Nextel), is the licensee of EA 064 (Chicago-Gary-Kenosha), Blocks A, B, and C, which

<sup>1</sup> FCC File Nos. 0000821295, 0000821357, and 0000672433 (Waiver Request).

<sup>2</sup> See 47 C.F.R. §§ 90.615, 90.617.

<sup>3</sup> See 47 C.F.R. § 90.617.

<sup>4</sup> See 47 C.F.R. § 90.621(e)(1).

<sup>5</sup> See Inter-Category Sharing of Private Mobile Radio Frequencies in the 806-821/851-866 MHz Bands, *Order*, 10 FCC Rcd 7350 (*Inter-Category Sharing Order*), *aff’d on recon.*, *Memorandum Opinion and Order*, 11 FCC Rcd 1452 (WTB 1995).

contain the five frequencies on which the subject Chicago stations operate.<sup>6</sup> Chicago and Nextel have jointly requested that the Commission grant a waiver of the inter-category sharing freeze in order to facilitate the relocation of Chicago, pursuant to Section 90.699 of the Commission's Rules,<sup>7</sup> to five Business Pool channels in the 800 MHz band.<sup>8</sup> Furthermore, Nextel has indicated its consent to Chicago's proposed operation on those frequencies.<sup>9</sup>

4. Chicago initially filed its modification application for Station WNDW413 on November 28, 2001.<sup>10</sup> The Bureau's Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch returned the application, because it included neither the requisite frequency coordination nor a letter from the Association of Public-Safety Communications Officials-International, Inc., stating that no Public Safety Pool frequencies are available in the 800 MHz band.<sup>11</sup> On March 13, 2002, Chicago amended the application to remedy these omissions, and on March 14, 2002, a second amendment was filed to correct certain administrative errors. On March 22, 2002, Chicago filed modification applications for Stations WPFY216<sup>12</sup> and WPY219.<sup>13</sup> An amendment correcting the station class code and rule section was filed for Station WPFY216 on April 1, 2002.

5. *Discussion.* A waiver may be granted where (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case and a grant of the requested waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.<sup>14</sup> For the reasons set forth below, we conclude that grant of the requested waiver is warranted under the circumstances presented.

6. In support of its request, Chicago contends that its proposal will not frustrate the underlying purpose of the inter-category sharing freeze, which is to preserve the availability of unused channels for Public Safety, Business, and I/LT users pending resolution of spectrum allocations matters raised in a separate proceeding.<sup>15</sup> In particular, Chicago asserts that because the channels in question are currently licensed to Nextel and are not otherwise available for licensing, there is no threat to the continued availability of these channels to Business Radio Service eligibles.<sup>16</sup> We agree.<sup>17</sup> Moreover, we agree with Chicago that it is in the public interest to encourage voluntary relocation agreements between EA

<sup>6</sup> See Letter dated Feb. 26, 2002 from James Wheaton, Manager, Compliance, Nextel Communications to Licensing & Technical Analysis Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission (Nextel Letter).

<sup>7</sup> 47 C.F.R. § 90.699.

<sup>8</sup> Waiver Request at 2. The Business Pool frequencies are 855.5625 MHz, 855.5875 MHz, 858.7875 MHz, 857.7875 MHz, and 860.7875 MHz.

<sup>9</sup> See Nextel Letter at 1. Nextel has agreed to protect Chicago's future operations upon the grant of the requested license modifications and to accept any resulting interference. *Id.* at 2.

<sup>10</sup> FCC File No. 0000672433.

<sup>11</sup> Automated Dismissal Letter, Reference No. 1275579 (Feb. 7, 2002). The application also lacked accurate antenna and frequency information.

<sup>12</sup> FCC File No. 0000821295.

<sup>13</sup> FCC File No. 0000821357.

<sup>14</sup> 47 C.F.R. § 1.925(b)(3)(i), (ii).

<sup>15</sup> Waiver Request at 2. See *Inter-Category Sharing Order*, 10 FCC Rcd at 7352-53 ¶ 7.

<sup>16</sup> Waiver Request at 2.

<sup>17</sup> See *City of Houston, Texas, Order*, DA 02-3131, ¶ 6 (WTB PSPWD rel. Dec. 31, 2002).

licensees and incumbents.<sup>18</sup>

7. *Conclusion.* Based on our review of the record before us, we conclude that Chicago has demonstrated that grant of a waiver of the inter-category sharing freeze is warranted. This action serves the public interest in that it will ensure the continued communications capabilities of a public safety user without compromising or frustrating the underlying purposes of the inter-category sharing freeze. It also facilitates the provision of service by Nextel in its EA in accordance with Section 90.699 of the Commission's Rules.

8. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 1.925 and 90.621 of the Commission's Rules, 47 C.F.R. §§ 1.925, 90.621, the requests for waiver filed by the City of Chicago on November 28, 2001 for Station WNDW413; March 22, 2002 for Station WPFY219; and March 22, 2002 for Station WPFY216 ARE GRANTED, and applications FCC File Nos. 0000821295, 0000821357, and 0000672433 SHALL BE REFERRED to the Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch for processing consistent with this *Order*.

9. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry  
Chief, Public Safety and Private Wireless Division  
Wireless Telecommunications Bureau

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<sup>18</sup> See *id.* at 3 (citing Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, *First Report and Order*, *Eighth Report and Order*, and *Second Further Notice of Proposed Rule Making*, 11 FCC Rcd 1463, 1508 ¶ 75 (1995), *affirmed on recon.*, *Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 9972 (1997)). See also Nextel Communications, Inc., *Order*, 14 FCC Rcd 11678, 11689 ¶ 26 (1999).